THE members of the Yale Law School are to be congratulated upon the appearance of the first number of the "Yale Law Journal," a legal periodical to be published six times a year by the students, and differing but very little in its general make-up from the REVIEW. The editors have our hearty good wishes for the success of their enterprise.

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# RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — CONTRACT TO EMPLOY FOR A TIME CERTAIN. — The defendant, a manufacturer, agreed to employ the plaintiff as his agent to sell his goods for five years. After two years the manufactory was destroyed by *vis major*, and the defendant in consequence failed to employ the plaintiff thereafter. It was held that the plaintiff could recover damages for the breach of the contract, the court saying that no condition of the continued existence of the manufactory could be implied.

*Rhodes* v. *Forwood* was distinguished on the ground that in that case there was no contract to employ the plaintiff, only a contract to employ no other. *Turner* v. *Goldsmith* [1891], 1 Q. B. 554 (Eng.).

AGENCY — PUBLIC OFFICER — RATIFICATION BY LEGISLATURE. — Where the agent of a State exceeds his authority in selling and delivering the property of his principal, and taking a note therefor from the purchaser, the Legislature of the State may, by a statute duly enacted for that purpose, in the absence of any constitutional prohibition against it, ratify the act of the agent in making the sale and receiving the note, and the State may then enforce payment of the note the same as an individual. *State of Wisconsin* v. *Timmins*, 49 N. W. Rep. 259 (Minn.).

BILLS AND NOTES — CERTAINTY OF AMOUNT — TRANSFER. — An instalment note, which contains the stipulation that upon default in the payment of one instalment the whole note shall become due, is not a negotiable instrument, for it is uncertain as to the time and amount of payment.

A sells a chattel and takes a note in payment. It is stipulated in the note that the title to the chattel shall not pass till the note is paid. A indorses the note to the defendant, and afterwards assigns his title to the chattel to the plaintiff. In a suit to recover the chattel, — *held*, that by the indorsement of the note, title to the security passed to the defendant. *W. W. Kimball Co.* v. *Mellen*, 48 N. W. Rep. 1100 (Wis.).

CONFLICT OF LAWS — CONDITIONAL SALES. — A sold and delivered a chattel to B, in Georgia, with reservation of the title in himself until the purchase-money be paid. This conditional sale was not recorded as is required by the law of Georgia, to make it valid against subsequent *bona fide* purchasers. B then carried the chattel into Alabama, and there sold it, without A's knowledge. *Held*, that the *bona fide* purchaser would be protected, had the second sale been in Georgia; but that the Alabama law must govern the subsequent sale, and under that law the purchaser took no more than the seller, B, had. *Weinstein* v. *Freyer*, 9 So. Rep. 285 (Ala.).

CONFLICT OF LAWS — CONTRACT OF CARRIAGE. — Where, in another State, goods are delivered to a common carrier for transportation into Iowa under a contract limiting his liability, valid where made, but void under the laws of Iowa, the contract is valid, and governs the liability of the carrier, though the loss occurs in this State. *Hazel* v. *Chicago M. & St. P. R. Co.*, 48 N. W. Rep. 926 (Ia.).

CONFLICT OF LAWS — DEATH BY WRONGFUL ACT. — The Kansas statute giving damages for death by wrongful act prescribes that action shall be brought by the personal representatives of the deceased. In Missouri, action

can be brought by the wife. Plaintiff's husband, a citizen of Missouri, was killed while travelling in Kansas upon defendant railroad; but he left no property in Kansas. *Held*, that plaintiff could not recover in Missouri upon the Kansas statute. *Semble*, that she had no possible remedy. She could not sue in either State upon the Missouri statute, because the accident did not occur within Missouri; there could not have been any recovery in Kansas upon the Kansas statute, because as deceased left no property in Kansas, no administrator could have been appointed there; nor, according to the law of that State, would an administrator appointed in Missouri have been recognized in Kansas. *Oates* v. *U. P. R. R. Co.*, 16 S. W. Rep. 487 (Mo.).

CONSTITUTIONAL LAW — ADVISORY OPINIONS. — Where a statute provides that a question which may be "about to rise" under an act of Parliament "may be submitted" to the High Court of Justice "for decision," the jurisdiction of that court is consultative only, not judicial. In such a case no appeal lies to the Court of Appeals. *Ex parte the County of Kent et al.* [1891], 1 Q. B. 725 (Eng.).

CONSTITUTIONAL LAW — AUSTRALIAN BALLOT ACT — EDUCATIONAL QUALIFICATION. — The constitution of Tennessee provides that every male citizen of the age of 21 years . . . . shall be entitled to vote, and there shall be no qualification attached to the right of suffrage, except that each voter must have paid his poll-tax. *Held*, that a statute providing for a system of elections whereby the names of all the candidates are printed upon one ticket, and each voter is compelled to mark a cross opposite the name of each candidate for whom he wishes to vote, is not unconstitutional, as requiring an education qualification. *Cook* v. *State*, 16 S. W. Rep. 471 (Tenn.). It was on the contrary assumption that a similar bill was twice vetoed in New York.

CONSTITUTIONAL LAW — AUSTRALIAN BALLOTS — MARKING BALLOTS. — Where a statute required each voter to designate his choice by a cross mark placed in a sufficient margin at the right of the name of each candidate, and that no voter shall place any mark upon his ballot by which it may be afterwards identified, — *held* (on a question put by the Legislature), that the cross mark need not be placed *in the square* provided for that purpose at the right of each name, but that any mark other than a cross, or placed other than to the right of the name of the candidate voted for, nullifies the ballot. *In re Vote Marks*, 21 Atl. Rep. (R. I.) 962.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — A Maine statute (Rev. St. c. 24, § 50) requires common carriers who bring into the State persons not having a settlement therein to remove them beyond the State if they fall in distress within a year, provided that the town or city authorities requesting such removal deliver such persons at the station or on board the boat of such carrier. *Held*, that this is a regulation of foreign and interstate commerce, and is in violation of art. 1, § 8, cl. 3, of Constitution of United States, and is therefore void. *City of Bangor* v. *Smith*, 22 Atl. Rep. 379 (Me.).

CONSTITUTIONAL LAW — JURISDICTION OF CONSUL. — The Constitution of the United States, securing to citizens the right of trial by jury and requiring an indictment by a grand jury, does not give a citizen or a temporary subject the right to claim the guaranty when tried before a consul or tribunal, in accordance with a treaty for offences committed in a foreign country; nor does the fact that the offence is committed on an American vessel give the offender the right to invoke the guaranty on the ground that the deck of the vessel is territory of the United States. *Ross* v. *McIntyre*, 11 Sup. Ct. Rep. 897.

CONSTITUTIONAL LAW — LEGISLATIVE ACTS — DELEGATION OF POWER. — Under Pol. Code, Cal., §§ 2568, 2569, subd. 6, the board of harbor commissioners of the port of Eureka are empowered to make rules and regulations for the protection of navigation in Humboldt Bay, and to impose penalties up to a certain amount. *Held*, that the clause giving them the power to impose penalties is unconstitutional; since the Legislature cannot delegate such power to any other body. *Board of Harbor Commissioners of Port of Eureka* v. *Excelsior Redwood Co.*, 26 Pac. Rep. 375 (Cal.).

CONTRACT — WAIVER OF CONDITION — INSURANCE. — Where an insurance company, after the destruction of the property, denies all liability on the ground that the policy was void, it thereby in effect waives all its rights under certain stipulations in the policy requiring proofs of loss, etc., and sixty days within which to pay, and a suit

on the policy brought before the end of the sixty days is not premature. *Phenix Ins. Co. of Brooklyn* v. *Weeks*, 26 Pac. Rep. 410 (Kan.).

MUNICIPAL CORPORATIONS — QUARANTINE — RESTRAINT OF TRADE. — In the absence of an epidemic showing an apparent necessity therefor, an ordinance prohibiting any one from bringing second-hand clothing into a town, or exposing it for sale therein, without furnishing proof to the mayor that it did not come from an infected district, is not a valid exercise of the charter power to establish and enforce quarantine regulations, but is an unreasonable restraint of trade. *Town of Kosciusko* v. *Slomberg*, 9 C So. Rep. 297 (Miss.).

NEGLIGENCE — CONTRIBUTORY — DOCTRINE OF DAVIES *v.* MANN. — Plaintiff a boy of 14, while standing still on one railroad track to await the passage of a train on another, was struck by an engine. *Held*, it was fatal error to charge that if plaintiff was standing on the track, and was neither looking nor listening for the approach of a train, and therein failed to exercise the care due from one of his age, yet if the bell of the approaching engine was not rung, and such failure to ring directly caused the accident, plaintiff could recover. *Dlauhi* v. *St. Louis, I. M. & S. Ry. Co.*, 16 S. W. Rep. 281 (Mo.).

This case is squarely in conflict with *Davies* v. *Mann*, 10 M. & W. 546, as understood and followed in England.

NEGLIGENCE — CONTRIBUTORY — TRESPASSERS. — The defendant knew that many people were in the habit of crossing its tracks, and going under its stationary cars in the car-yard. This knowledge alone does not render the defendant liable in damages for an injury caused by a movement of the cars in the yard, due to the negligence of the defendant's servants in handling cars at a distance from the yard. *Central Ry. & Banking Co.* v. *Ryles*, 13 S. E. Rep. 584 (Ga.).

PERSONAL PROPERTY — LIENS — INCONSISTENT DEFENCES. — Where an administrator was sued for goods claimed to belong to the partnership of which the intestate had been a member, — *held*, that he, the administrator, could not, in his defence, at once claim the goods as belonging to the estate of the intestate, and set up a lien on them in his own favor. *Gardner* v. *Gilliham*, 26 Pac. Rep. 220 (Ore.).

QUASI-CONTRACT — VOLUNTARY SERVICE. — The plaintiff, who had a home of his own, was requested by his father to leave it, and live with and care for him, the father, promising to will him his farm. The plaintiff complied. The father soon afterwards became insane, and therefore unable to make the will. *Held*, the plaintiff may recover on a *quantum meruit* against the administrator of the father's estate. *Hudson* v. *Hudson*, 13 S. E Rep. 583 (Ga.).

This decision seems inconsistent with the rules of quasi-contracts, there being clearly no implied promise on the part of the father to compensate the plaintiff otherwise than by will. *Osborne* v. *Guy's Hospital*, 2 Strange, 728, would seem to be in point. Clearly, the plaintiff in giving his services looked to a will alone for compensation.

REAL PROPERTY — ADVERSE POSSESSION — Where one purchases, pays for, and receives possession of land under a parol contract of sale, the fact that he often demands a deed in accordance with the contract does not constitute such recognition of the vendor's title as will destroy the adverse character of his possession. *Newsome* v. *Snow*, 8 So. Rep. 377 (Ala.).

REAL PROPERTY — AUSTRALIAN LAND TRANSFER SYSTEM. — The Victorian "Transfer of Land Statute" protects those who deal with a proprietor whose name is upon the register. A forged a transfer of land owned by the plaintiff, to a fictitious and non-existent grantee, procured the transfer to be registered, and then forged a mortgage in the name of the fictitious grantee to the defendant. In executing the mortgage, A purported to act as agent for the fictitious mortgagor. *Held*, that the defendant got no title. Purchasers must ascertain at their peril the existence and identity of the grantor. The statute protects them merely from infirmities of title. *Gibbs* v. *Messer* [1891], A. C. 248.

TORT — CONSPIRACY — MALICE — INTERFERENCE WITH TRADE. — On demurrer. Plaintiff, a butcher, alleged (*a*) that defendants, who were dealers in beef cattle, maliciously agreed among themselves not to trade with him; (*b*) that they maliciously persuaded another dealer not to trade with him. *Held*, that a civil action for conspiracy does not lie, except where defendants would have been liable separately; that plaintiff could not therefore recover on his first

ground of action, but that he could on his second. *Delz* v. *Winfree*, 16 S. W. Rep. 111 (Texas). Approving *Walker* v. *Cronin*, 107 Mass. 562.

TORT — DECEIT — ACTUAL INTENT. — Plaintiff, a depositor, sued defendant, president of a bank, for false representations as to the solvency of the bank, whereby plaintiff was induced not to withdraw his deposit, and consequently lost it. *Held*, a charge to the jury was erroneous which stated that plaintiff must prove defendant to have intended to deceive; defendant was liable, whatever his intent, if by the exercise of ordinary care he might have ascertained that his statements were false. *Giddings et al.* v. *Baker et al.*, 16 S. W. Rep. 33 (Texas).

This case is directly opposed to the English law, as settled in 1887 by the House of Lords in *Peek* v. *Derry*, L. R. 14 App. Cas. 337; and also contrary to the weight of American authority. See *Cowley* v. *Smith*, 46 N. J. Law, 380 (1884).

TORTS — FORCIBLE ENTRY — INJURY TO FURNITURE. — The plaintiff, a tenant of defendant's house, wrongfully refused to give up possession on the expiration of his tenancy. The defendant, desiring to rebuild, sent workmen to remove the roof; in such removal, without any personal violence, certain tiles fell on plaintiff's furniture in the room below and damaged it. *Held*, that the defendant was not liable in trespass. *Beddall* v. *Maitland*, 17 Ch. D. 174, distinguished on the ground that, in that case, the damage was done in the course of a forcible entry within the penal statute; while here, what was done did not amount to a forcible entry. *Jones* v. *Foley* [1891], 1 Q. B. 730 (Eng.).

It is hard to see the distinction between this case and *Beddall* v. *Maitland*. It is submitted that the question depends, not so much on the nature of the entry, as on the fact of the owner being in or out of possession.

TORTS — MALICIOUS INSTITUTION OF CIVIL SUIT — SLANDER — PRIVILEGED COMMUNICATION. — Where B brings an action of slander against A, and afterward voluntarily discontinues it, — *held*, that in order to give A an action for malicious institution of a civil suit, it is not necessary that either his person should have been arrested or his goods seized. (Cf. Cooley on Torts, 2d ed., 217, *contra*.)

*Semble*, that when a voter says in conversation with other voters that B, a candidate for office, has stolen horses, it is not a privileged communication. *Smith* v. *Burrus*, 16 S. W. Rep. 881 (Mo.).

TRUSTS — PRIOR EQUITY — PURCHASE FOR VALUE. — B, holding shares in trust for the plaintiffs, pledged them with the defendant for a private debt. The defendant had no notice of the trust. After learning of it he applied to the company, which had been notified of the trust, to have the transfer registered. By the articles of association no transfer of stock could be made unless approved by the directors. Upon this ground, — *held*, that the plaintiff's prior equity must prevail. The second claimant must be able to show a complete legal title, or at least that all the formalities have been complied with, so that nothing more than a purely ministerial act remains to be done. *Moore* v. *Northwestern Bank* [1891], 2 Ch. 599.

This case adopts the true test, and is plainly distinguishable from *Dodds* v. *Hills*, 2 Hem. & Mill. 424. In that case the company could not object to the transfer of the shares, and accordingly the pledgee immediately upon the transfer of the certificates to himself got a complete legal right, — an irrevocable power of attorney which entitled him to demand absolutely the transfer to himself upon the books of the company. Here he got no such complete legal right, and the company could not approve the transfer without assisting in the fraud.

USURY — INTEREST AS PENALTY. — Where one agreed to pay interest at the rate of six per cent, but in case payments were not made promptly, then the principal was to draw ten per cent, — *held*, that the agreement to pay increased interest in case of default was in the nature of a penalty, and did not taint the original contract with usury. *Upton* v. *O'Donahue*, 49 N. W. Rep. 267 (Neb.).

WILLS — UNDUE INFLUENCE — BURDEN OF PROOF. — Where a beneficiary has a testator under his control with power to make his will the will of the testator, especially in a case where the testator has made an unnatural disposition of his property, the court presumes that the beneficiary has used undue influence, and puts on him the burden of showing that he did not influence the testator. "Whatever constrains a person to do what is against his will, and what he would not do if left to himself, is undue influence, no matter by what means the control is exercised." *Carroll* v. *Hurse*, 22 Atl. Rep. 191 (N. J.).